

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Sprint Communications Company)	IC Nos. 04-S86166
)	04-S86233
Complaints Regarding)	04-S86262
Unauthorized Change of)	04-S86266
Subscriber's Telecommunications Carrier)	04-S86274
)	04-S86291
)	04-S86301
)	04-S86334
		04-S86388
		04-S86413
		04-S86416
		04-S86419
		04-S86460
		04-S86483
		04-S86538
		04-S86549
		04-S86563
		04-S86670
		04-S86712
		04-S86717
		04-S86726
		04-S86732
		04-S86738
		04-S86760
		04-S86769

ORDER

Adopted: October 26, 2004

Released: October 28, 2004

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints¹ alleging that Sprint Communications Company (Sprint) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Sprint's actions did result in an unauthorized change in Complainants'

¹ See Appendix A.

telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of

(Continued from previous page) _____

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116, (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120(b).

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this Order do not preclude the Commission from taking action, if warranted, pursuant to section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications services providers had been changed from their authorized carriers to Sprint without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Sprint of the complaints and Sprint responded.¹³ Sprint states that authorization was received and confirmed through signed letters of agency (LOAs). Sprint's LOAs, however, were not dated by the subscriber as required by our rules.¹⁴ Sprint has failed to produce clear and convincing evidence that Complainants authorized a carrier change.¹⁵ Therefore, we find that Sprint's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss Sprint's liability below.¹⁶

5. Sprint must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁷ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the authorized carriers nor Sprint may pursue any collection against Complainants for those

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix A.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹³ See Appendix A.

¹⁴ See 47 C.F.R. § 64.1130(b).

¹⁵ See 47 C.F.R. § 64.1150(d).

¹⁶ If a Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁷ See 47 C.F.R. § 64.1160(b).

charges.¹⁸ Any charges imposed by Sprint on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their respective authorized carrier at the rates each subscriber was paying to its respective authorized carrier at the time of the unauthorized change.¹⁹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed by Complainants²⁰ against Sprint ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred to the relevant Complainant and neither the authorized carrier nor Sprint may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹⁸ See 47 C.F.R. § 64.1160(d).

¹⁹ See 47 C.F.R. §§ 64.1140, 64.1160.

²⁰ See Appendix A.

APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>
04-S86166	February 2, 2004	March 26, 2004
04-S86233	February 4, 2004	April 9, 2004
04-S86262	January 30, 2004	March 26, 2004
04-S86266	February 10, 2004	March 12, 2004
04-S86274	February 4, 2004	March 26, 2004
04-S86291	December 16, 2003	March 26, 2004
04-S86301	January 30, 2004	April 9, 2004
04-S86334	February 4, 2004	April 9, 2004
04-S86388	February 25, 2004	April 9, 2004
04-S86413	March 8, 2004	April 2, 2004
04-S86416	March 8, 2004	April 2, 2004
04-S86419	March 8, 2004	April 17, 2004
04-S86460	March 20, 2004	April 16, 2004
04-S86483	March 9, 2004	April 16, 2004
04-S86538	March 30, 2004	April 30, 2004
04-S86549	April 4, 2004	June 24, 2004
04-S86563	March 30, 2004	April 30, 2004
04-S86670	April 2, 2004	June 4, 2004
04-S86712	February 23, 2004	May 28, 2004
04-S86717	February 18, 2004	May 14, 2004
04-S86726	April 12, 2004	June 21, 2004
04-S86732	April 12, 2004	June 29, 2004
04-S86738	April 22, 2004	June 2, 2004
04-S86760	February 19, 2004	June 4, 2004
04-S86769	February 23, 2004	June 4, 2004